IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 328 of 2005

Decided on : May 22, 2006

Smt. Nirmala Devi and others **…..Appellants.**

VERSUS

Pyar Chand and others **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1] Yes.

For the Appellants : Mr. Ajay Sharma, Advocate.

For the Respondents : Mr. Ajay Chandel, Advocate, for respondent No.1.

None for other respondents.

Surjit Singh, Judge (Oral)

Heard and gone through the record. Respondent Pyar Chand, hereinafter referred to as plaintiff, filed a suit seeking declaration that he alongwith proforma-defendants Punnu and Kuldip Chand, who are related to him as his brothers and respondents No.2 and 3 herein, are the tenants in respect of land comprised in Khasra Nos. 100, 144, 158, 187 and 188, situate in Mohal Malnu, Mauza Punner, Tehsil Palampur, District Kangra, hereinafter called suit land, and that the order of Assistant Collector, 1st Grade, Palampur, holding that out of the suit land, land bearing khasra Nos. 100, 144, measuring 0-30-22 hectares and a portion of land comprised in

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes.***

Khasra No.158, shown by min number 158/1, measuring 0-56-72 hectares, are in possession of the owners, i.e. appellants-defendants, is illegal and by way of further relief prayer was made for grant of permanent prohibitory injunction, restraining the appellants-defendants from interfering in the possession of the plaintiff and proforma-defendants. It was alleged that from the very beginning the plaintiff alongwith proforma-defendants and prior to them their father was in possession of the suit land as tenant on payment of rent in the form of sharing of crop, but the appellants-defendants made an application to the Assistant Collector, 1st Grade, Palampur, some time in the year 1991-92 and obtained an order that out of the suit land, land bearing Khasra Nos. 100, 144 and 158/1 was not in possession of the plaintiff and proforma-defendants and on the basis of that order entries were changed in the revenue papers, showing the appellants-defendants as owners in possession. The order was alleged to be illegal and without jurisdiction, because under Section 104(4) of the H.P. Tenancy and Land Reforms Act read with Part-V of the H.P. Tenancy and Land Reforms Rules, only the Land Reforms Officer, in his capacity as Assistant Collector, 1st Grade, could have passed an order determining the dispute whether a person recorded as tenant in the revenue papers was in fact a tenant or not.

2. Suit was contested by the appellants-defendants. They raised various preliminary objections, besides contesting the claim on merits. It was alleged that the suit was not maintainable, the Civil Court had no jurisdiction, the plaintiff had no cause of action, suit was bad for non-joinder and mis-joinder of parties, the plaintiff was

estopped by his acts and conduct to file the suit, the plaintiff had no locus standi and the valuation of the suit for the purposes of Court fee and jurisdiction had not been done correctly. On merits, it was alleged that land with respect to which correction of entries had been ordered by the Assistant Collector, 1st Grade, was in possession of the defendants from the very beginning and the plaintiff and his brothers, impleaded as proforma-defendants, had never been in possession thereof.

3. The trial Court returned the finding that the Assistant Collector, 1st Grade, Palampur, did not have the jurisdiction to pass the order correcting the entries in favour of the appellants-defendants and consequently decreed the suit. Appeal filed by the appellants-defendants in the Court of District Judge has been dismissed.

4. Before me, it has been urged by the learned counsel for the appellants that under Rule 29 of the H.P. Tenancy and Land Reforms Rules, it is the Assistant Collector who has the jurisdiction to determine the question whether a person recorded as a tenant in the revenue papers is in fact a tenant or not and that, therefore, nothing is wrong with the order passed by the Assistant Collector, 1st Grade, Palampur, holding that the plaintiff and proforma-defendants are not the tenants in respect of the portion of the suit land.

5. Rule 29 says that whenever there is a dispute regarding entries in the land records, the Land Reforms Officer, in his capacity as Assistant Collector of the 1st Grade, shall decide the dispute under sub-section (4) of Section 104, in accordance with the relevant provisions of the Punjab Revenue Act or H.P. Land Revenue Act,

as the case may be. Firstly, the Rule itself says that the jurisdiction is vested in the Land Reforms Officer, though he would be acting as Assistant Collector of the 1st Grade whole deciding such a dispute and follow the procedure laid down in the Land Revenue Act. In any case, Rule 29 is not to be read in isolation. It is to be read conjointly with other provisions of Part-V, of which it is a part. Part-V of the Rules pertains to the procedure for acquisition of proprietary rights by non-occupancy tenants and resumption of land by the land owners under Sub-section (1) of Section 104 of the H.P. Tenancy and Land Reforms Act. That means an order, under Rule 29 of the H.P. Tenancy and Land Reforms Rules, can be passed by the Land Reforms Officer, in his capacity as Assistant Collector of the 1st Grade, only when there are proceedings before him, either for resumption of land by the land-owner, under Sub-section (1) of Section 104, or for attestation of mutation of conferment of proprietary rights upon the tenant. If no such proceedings are pending before the Land Reforms Officer, he cannot entertain an application by the land-owner for correction of entries in the revenue papers, so as to record him in possession of the land, which as per entries in the revenue papers, is recorded in possession of some other person as a tenant.

6. Admittedly, in the present case, the suit land was being recorded in possession of the respondent-plaintiff and his brothers and prior to them their father, even before the settlement of 1979-80. No proceedings, as already noticed, were there before the Assistant Collector, 1st Grade, Palampur, for the resumption of land or for attestation of mutation for the conferment of proprietary rights upon

the respondent-plaintiff and his brothers. The appellants-defendants moved an application for correction of entries not to the Land Reforms Officer but to the Assistant Collector, 1st Grade. The latter sent a Kanoongo and a Patwari to the spot and on getting a report from them that the physical possession on a part of the suit land was with the owners ordered the correction of the entries in favour of the owners in respect of that portion of the suit land and at the same time ordered that mutation conferring the proprietary rights upon the plaintiff and the proforma-defendants in respect of the remaining land be entered and attested.

7. Thus, the order of the Assistant Collector 1st Grade is without jurisdiction on the face of it. Hence, no fault can be found with the view taken by the two Courts below that the order of the Assistant Collector 1st Grade is without jurisdiction. Since no substantial question of law arises, appeal is dismissed.

CMP No.581/2005

8. Dismissed. Interim order, dated 6th July, 2005, passed on the application is vacated.

(Surjit Singh)
Judge.

May 22, 2006(sd)